IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH JAIPUR

J U D G M E N T

Amar Lal and others
...Appellants
V/S
Executive Engineer, Public Works Department and others
....Respondents

S.B. Civil First Appeal No. 571/06 against the order dated 27.9.20066 passed by the District Judge Jhalawar in Civil Suit No.264/06.

Date of Judgment ::: November 24**, 2006**

PRESENT

HON'BLE MR. JUSTICE KHEM CHAND SHARMA

Mr. P.S. Shukla for the appellants
Mrs.Sadhna Bhatt Deputy Government Advocate

BY THE COURT:

Since controversy lies in narrow compass, counsel for both the sides have jointly made a statement at the bar that appeal itself be decided at this stage. Accordingly arguments have been heard for final decision of the appeal.

The plaintiffs filed an application before the learned District Judge, Jhalawar, seeking exemption

from serving notice under Section 80 CPC upon the defendants before filing a suit for declaration and permanent injuction. The learned court below vide its impugned order declined permission to file the suit on the ground that it does not meet the requirements of Section 80(2) CPC and accordingly dismissed the plaintiffs' application. Thus the only question that requires adjudication is whether the court below has rightly decided the application under Section 80(2) CPC filed by the plaintiffs?

Under the Scheme known as PMGSY, roads connecting villages having population of more than 500 had to be constructed in 19 districts of Rajasthan. The Government of Rajasthan vide letter dated 15.4.2006 (Annexure-1) issued administrative sanction for packages for construction of New Road works under GMGSY scheme in 19 districts of Rajasthan for the year 2006-07. On 15.4.2006 a list of sanctioned works was forwarded to the concerned authorities.

In the instant case, as per Annexure 2, road from Mandawar Teendar Bakani to Barbela in Jhalawar district is to be constructed. The proposed length of the road was 3.95 Kms. The District Collector, Jhalawar vide

letter dated 23.8.2006 has directed the Executive Engineer, Public Works Department, Jhalawar to ensure directions issued by the Hon'ble Chief Minsiter that connecting road should not be constructed on forest land and that road be constructed via Badbeli.

Learned counsel for the appellants has submitted that construction of road connecting village Badbela has illegally been shifted to village Badbeli inasmuch as village Badbeli is not qualified to have the connecting road because it is lacking in requisite population and does not fall under the PMGSY.

The Court below has refused to grant leave to file suit on the ground that filing of suit on 22.9.2006 is highly belated, inasmuch as the dispute in this respect had already arisen long back and administrative orders had also been issued long back. Even the Collector vide his letter dated 23.8.2006 had directed the Executive Engineer, PWD to observe strict compliance of the directions issued by the Hon'ble Chief Minister that road should not be constructed on forest land and that it has now to be constructing connecting village Badbeli. Therefore, the matter is not of acute urgency.

Service of notice under Section 80 is a condition precedent for institution of a suit against the Government or a Public Officer. A conjoint reading of Sec. 80 CPC makes it clear that service of notice under sub Sec.(1) is imperative except where urgent and immediate relief is to be granted by the Court, in which suit against the Government or a Public Officer may be instituted, but with the leave of the Court. At the same time, the provision madates that if the Court is of the opinion that no urgent or immediate relief deserves to be granted it should return the plaint for presentation after complying with the requirements contemplated in sub-section (1) of Sec. 80 CPC.

In the instant case, the plaintiffs who are before the court in their representative capacity cannot at be excepted to have knowledge about the decisions taken by the Government and/or the orders issued by the Government. Such decisions/orders are not conveyed to the public at large. The villagers of Badbela came to know about construction of road connecting village Badbeli only on 10.9.2006 when the construction work had started and therefore, the villagers took a decision to approach the court of law and on 22.9.2006

i.e. within 12 days of their knowledge, filed the present application seeking leave to file suit for permanent injunction. In this view of the matter, I am of the considered opinion that the learned subordinate Judge wrongly adjudged the urgency of the matter and has refused permission to file suit without serving notice under Sec. 80 CPC.

Having regard to the legislative intent that the power conferred in the Court under Sub-section (2) is to avoid genuine hardship, the plaintiffs should been granted leave to institute suit without complying with the requirements of sub-section (1) of Sec. 80 CPC.

In the result, the appeal is allowed. The impugned order is set aside and leave is granted to the plaintiffs to institute the suit without serving any notice as required by sub-Sec. (1) of Section 80 CPC. The case is remanded back to the court below to proceed further in accordance with law.

(Khem Chand Sharma), J.

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